

been denied, and returns the request to the ALJ hearing office or the MAC, which will treat it as a request for hearing or for MAC review, as appropriate.

(2) Whenever a review entity forwards a rejected EAJR request to an ALJ hearing office or the MAC, the appeal is considered timely filed and the 90-day decision making time frame begins on the day the request is received by the hearing office or the MAC.

(j) *Interest on any amounts in controversy.* (1) If a provider or supplier is granted judicial review in accordance with this section, the amount in controversy, if any, is subject to annual interest beginning on the first day of the first month beginning after the 60-day period as determined in accordance with paragraphs (f)(4) or (h)(2) of this section, as applicable.

(2) The interest is awarded by the reviewing court and payable to a prevailing party.

(3) The rate of interest is equal to the rate of interest applicable to obligations issued for purchase by the Federal Supplementary Medical Insurance Trust Fund for the month in which the civil action authorized under this subpart is commenced.

(4) No interest awarded in accordance with this paragraph shall be income or cost for purposes of determining reimbursement due to providers or suppliers under Medicare.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005]

ALJ HEARINGS

§ 405.1000 Hearing before an ALJ: General rule.

(a) If a party is dissatisfied with a QIC's reconsideration or if the adjudication period specified in § 405.970 for the QIC to complete its reconsideration has elapsed, the party may request a hearing.

(b) A hearing may be conducted in person, by video-teleconference (VTC), or by telephone. At the hearing, the parties may submit evidence (subject to the restrictions in § 405.1018 and § 405.1028), examine the evidence used in making the determination under review, and present and/or question witnesses.

(c) In some circumstances, a representative of CMS or its contractor, including the QIC, QIO, fiscal intermediary or carrier, may participate in or join the hearing as a party. (see § 405.1010 and § 405.1012).

(d) The ALJ issues a decision based on the hearing record.

(e) If all parties to the hearing waive their right to appear at the hearing in person or by telephone or video-teleconference, the ALJ may make a decision based on the evidence that is in the file and any new evidence that is submitted for consideration.

(f) The ALJ may require the parties to participate in a hearing if it is necessary to decide the case. If the ALJ determines that it is necessary to obtain testimony from a non-party, he or she may hold a hearing to obtain that testimony, even if all of the parties have waived the right to appear. In that event, however, the ALJ will give the parties the opportunity to appear when the testimony is given, but may hold the hearing even if none of the parties decide to appear.

(g) An ALJ may also issue a decision on the record on his or her own initiative if the evidence in the hearing record supports a fully favorable finding.

§ 405.1002 Right to an ALJ hearing.

(a) A party to a QIC reconsideration may request a hearing before an ALJ if—

(1) The party files a written request for an ALJ hearing within 60 days after receipt of the notice of the QIC's reconsideration.

(2) The party meets the amount in controversy requirements of § 405.1006.

(3) For purposes of this section, the date of receipt of the reconsideration is presumed to be 5 days after the date of the reconsideration, unless there is evidence to the contrary.

(4) For purposes of meeting the 60-day filing deadline, the request is considered as filed on the date it is received by the entity specified in the QIC's reconsideration.

(b) A party who files a timely appeal before a QIC and whose appeal continues to be pending before a QIC at the end of the period described in

§ 405.970 has a right to a hearing before an ALJ if—

(1) The party files a written request with the QIC to escalate the appeal to the ALJ level after the period described in § 405.970(a) and (b) has expired and the party files the request in accordance with § 405.970(d);

(2) The QIC does not issue a final action within 5 days of receiving the request for escalation in accordance with § 405.970(e)(2); and

(3) The party has an amount remaining in controversy specified in § 405.1006.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005]

§ 405.1004 Right to ALJ review of QIC notice of dismissal.

(a) A party to a QIC's dismissal of a request for reconsideration has a right to have the dismissal reviewed by an ALJ if—

(1) The party files a written request for an ALJ review within 60 days after receipt of the notice of the QIC's dismissal.

(2) The party meets the amount in controversy requirements of § 405.1006.

(3) For purposes of this section, the date of receipt of the QIC's dismissal is presumed to be 5 days after the date of the dismissal notice, unless there is evidence to the contrary.

(4) For purposes of meeting the 60-day filing deadline, the request is considered as filed on the date it is received by the entity specified in the QIC's dismissal.

(b) If the ALJ determines that the QIC's dismissal was in error, he or she vacates the dismissal and remands the case to the QIC for a reconsideration.

(c) An ALJ's decision regarding a QIC's dismissal of a reconsideration request is final and not subject to further review.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005]

§ 405.1006 Amount in controversy required to request an ALJ hearing and judicial review.

(a) *Definitions.* For the purposes of aggregating claims to meet the amount in controversy requirement for an ALJ hearing or judicial review:

(1) “Common issues of law and fact” means the claims sought to be aggregated are denied, or payment is reduced, for similar reasons and arise from a similar fact pattern material to the reason the claims are denied or payment is reduced.

(2) “Delivery of similar or related services” means like or coordinated services or items provided to one or more beneficiaries.

(b) *ALJ review.* To be entitled to a hearing before an ALJ, the party must meet the amount in controversy requirements of this section.

(1) For ALJ hearing requests, the required amount remaining in controversy must be \$100 increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) as measured from July 2003 to the July preceding the current year involved.

(2) If the figure in paragraph (b)(1) of this section is not a multiple of \$10, then it is rounded to the nearest multiple of \$10. The Secretary will publish changes to the amount in controversy requirement in the FEDERAL REGISTER when necessary.

(c) *Judicial review.* To be entitled to judicial review, a party must meet the amount in controversy requirements of this subpart at the time it requests judicial review.

(1) For review requests, the required amount remaining in controversy must be \$1,000 or more, adjusted as specified in paragraphs (b)(1) and (b)(2) of this section.

(2) [Reserved]

(d) *Calculating the amount remaining in controversy.* (1) The amount remaining in controversy is computed as the actual amount charged the individual for the items and services in question, reduced by—

(i) Any Medicare payments already made or awarded for the items or services; and

(ii) Any deductible and coinsurance amounts applicable in the particular case.

(2) Notwithstanding paragraph (d)(1) of this section, when payment is made for items or services under section 1879 of the Act or § 411.400 of this chapter, or the liability of the beneficiary for